IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JOHN MORENO	:	CIVIL ACTION
	:	
v.	:	
	:	
CITY OF PHILADELPHIA, et al.	:	NO. 25-2030

MEMORANDUM

Bartle, J. September 8, 2025

Plaintiff John Moreno alleges that the City of Philadelphia and its employee Thomas Rybakowski were responsible for illegally demolishing a building he owned. He originally filed this action under 42 U.S.C. § 1983 against the City only in the Court of Common Pleas of Philadelphia County on March 25, 2025. Plaintiff claims violations of his constitutional rights to procedural due process and to be free from an illegal seizure. The City timely removed the action based on the existence of a federal question. Plaintiff amended his complaint as a matter of right on June 11, 2025 to add a claim alleging that Rybakowski violated plaintiff's right to procedural due process in both his official and individual capacities.

Before this court is the motion of both defendants to dismiss plaintiff's claims against them under Rule 12(b)(6) of the Federal Rules of Civil Procedure (Doc. # 16).

I

For present purposes, the court must accept as true all well-pleaded facts in plaintiff's amended complaint. Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007). The court may also consider "exhibits attached to the complaint and matters of public record." Pension Benefit Guar. Corp. v. White Consol. Indus., Inc., 998 F.2d 1192, 1196 (3d Cir. 1993) (citing 5A Charles Allen Wright & Arthur R. Miller, Federal Practice and Procedure § 1357 (2d ed. 1990)). When there is a document "integral to or explicitly relied upon in the complaint," it may also be considered as there is no concern of lack of notice to the plaintiff. See Schmidt v. Skolas, 770 F.3d 241, 249 (3d Cir. 2014) (quoting In re Burlington Coat Factory Secs. Litig., 114 F.3d 1410, 1426 (3d Cir. 1993) (quotation marks omitted)).

Plaintiff must allege sufficient factual content to state a claim that is plausible on its face. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). The pleading must contain more than "labels and conclusions." Twombly, 550 U.S. 545. It must plead more than "a formulaic recitation of the elements of a cause of action" or "naked assertions devoid of further factual enhancement." Ashcroft, 556 U.S. at 678 (quoting Twombly, 550 U.S. at 555) (internal quotations and alterations omitted).

II

According to the amended complaint, plaintiff purchased a property at 3121 Wharton Street in the City of Philadelphia on April 4, 2019. On September 7, 2022, the City's Department of Licenses & Inspections ("L&I") inspected the property and found that it was "imminently dangerous" in violation of the City's Property Maintenance Code. As a result of this finding, the City on September 8, 2022, issued a "Violation Notice and Order to Correct" of which plaintiff had notice (Doc. # 13-1). It stated that the property "was in imminent danger of collapse," had "exterior walls [] not anchored to supporting and/or supported elements," had "roofing or roofing components [with] defects that admit rain," and had components which "have reached their limit state." Plaintiff was directed to remedy the violations before September 17, 2022. The notice warned that if he did not do so the City would "take action as soon as possible to vacate and demolish the imminently dangerous structure." The notice also advised plaintiff of his right to appeal on or before September 13, 2022.

On December 1, 2022, plaintiff secured from L&I a "Make Safe" permit for the property, which permitted him to remediate the dangerous condition. The permit, which plaintiff attaches to his complaint (Doc. # 13-1, at 6), states that it

> [S]hall expire if the authorized work of Use is not commenced within, or if work is suspended or abandoned for period of, six (6) months from date of issuance with the following exceptions: 30-days or 10-days for Permits related to Unsafe or Imminently Dangerous Properties respectively.

(emphasis added). Plaintiff avers in his amended complaint that he "immediately" began cleaning debris from the property and purchased "several thousand dollars in materials" in order to begin construction.

The Make Safe permit further provides a list of inspections which were "required for the work proposed for this Permit." It directed that plaintiff "shall notify all Special Inspection Agencies retained by [plaintiff] prior to commencement of any work requiring Special Inspections . . . ." The permit required nine inspections, including an "Initial Site Inspection."

Plaintiff alleges that the Make Safe permit for his property expired on January 13, 2023 without his knowledge. According to plaintiff, he did not receive notice of the change in the permit's status.

On January 28, 2023, while plaintiff had contractors working on the property, the City's demolition contractor arrived at the property to begin demolition. Plaintiff asserts that the demolition of his property was directed by defendant

Rybakowski and that there was no notice of demolition posted at the property.

On January 30, 2023, plaintiff filed a pro se "motion for stay of demolition" in the Court of Common Pleas of Philadelphia County. He sought an injunction to prevent the demolition of the building. Plaintiff also applied on that same day to L&I for another permit to continue construction on the property.

On February 1, 2023, Judge Joshua H. Roberts of the Court of Common Pleas held an evidentiary hearing on plaintiff's motion.[1] At the hearing, Thomas Rybakowski, a construction compliance supervisor with L&I, testified on behalf of L&I.

At the conclusion of the hearing, Judge Roberts denied plaintiff's motion. He ruled from the bench, stating:

> I believe that [Moreno has] been well-intentioned throughout this whole process. And certainly, you have taken some steps to retain the necessary – whether it's permits or professionals working with you, as [the City's counsel] has noted and as I have recited, based on the timeline, the opportunities to do what you had to do, there have been several of them going back to September. And where we are today, particularly within the past couple of days, the work should have stopped, it didn't stop.
>
> So, for all of the reasons – and I will issue an order that will go through the

1. A transcript of this hearing is currently before the court (Doc. # 16-1).

> injunction standard in a little bit more detail, I'm going to deny the motion for preliminary injunction.

The order, signed by Judge Roberts, simply stated that plaintiff "failed to satisfy standard for the issuance of a preliminary injunction pursuant to Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mount, Inc., 828 A[.]2d 995, 1[0]01 (Pa. 2003)."[2] Plaintiff took no appeal, although he was advised of his right to do so. The property was thereafter demolished.

III

Plaintiff sues defendants under 42 U.S.C. § 1983, which provides in relevant part that:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress . . . ."

The City first moves to dismiss plaintiff's claim that the City violated his procedural due process right under the Fifth and Fourteenth Amendments to the Constitution by failing

2. On February 13, 2023, the City filed preliminary objections to plaintiff's complaint. Plaintiff failed to respond to those objections, and thereafter, Judge Michele D. Hangley of the Court of Common Pleas of Philadelphia County dismissed his complaint with prejudice.

to provide him with adequate notice of the Make Safe permit's expiration and the scheduled demolition of his property.

A municipality such as the City of Philadelphia may only be accountable when the injury results from actions taken pursuant to a governmental policy, practice, or custom, or when it is deliberately indifferent to its stated policy. Monell, 436 U.S. at 694; Forrest v. Parry, 930 F.3d 93, 106 (3d Cir. 2019). To allege deliberate indifference, plaintiff must assert facts that show that (1) municipal policymakers know that employees will confront a particular situation, (2) the situation involves a difficult choice or a history of employees mishandling, and (3) the wrong choice by an employee will frequently cause deprivation of constitutional rights. See id. (citing Carter v. City of Philadelphia, 181 F.3d 339, 357 (3d Cir. 1999)). A municipality may not be held vicariously liable under 42 U.S.C. § 1983, that is it may not be held liable under the theory of respondeat superior for the unconstitutional misconduct of its employees. Monell, 436 U.S. at 691.

A plaintiff pleads the existence of a policy when he or she plausibly alleges that a decisionmaker with final authority has issued an official proclamation, policy, or edict. The City's Property Maintenance Code, approved by City Council, provides that an imminently dangerous property may be demolished. It allows for the issuance of a Make Safe permit

which will expire if the property owner fails to conform his work to the schedule he or she previously provided to the code official for City approval.

The Code provides that when an imminently dangerous condition is found, the code official shall serve on the owner "a written notice describing the imminent danger and specifying the required repair to render the structure safe." Phila. Code, tit. 4, chap. 4-220.0, § PM-110.2. The official shall also post a copy of the notice "in a conspicuous place on the premises; and such procedure shall be deemed the equivalent of personal notice." Id. at § 110.3.

At this point, the owner can either do nothing and allow the demolition of his or her property or bring the property into compliance. If he or she chooses the latter option, as plaintiff did, "the code official is authorized to require that an analysis and plan of compliance prepared by a structural engineer registered in the Commonwealth of Pennsylvania be submitted for review and approval." Id. at § PM-110.7. The Code further requires that:

> As part of the application process to secure a building permit to abate an imminently dangerous condition, the applicant shall provide a schedule to the code official. The code official shall have the authority to accept or reject the work schedule. The work schedule shall contain:

1. The date work will commence to abate the condition.

2. The name, address and phone number of the contractor who will abate the dangerous condition.

3. Incremental phases which include work to be performed and time estimates for completion within each phase.

4. The date all work for bringing the property into code compliance is to be completed.

Id. at § PM-110.7.1. If "the work does not conform to the approved work schedule, the permit shall be revoked." Id. at § PM-110.7.1.1.

The City asserts that the Philadelphia City Code is reasonably calculated to inform owners that their property has been identified as "imminently dangerous" prior to demolition.

The touchstone of procedural due process is notice and the opportunity to be heard. Mathews v. Eldridge, 424 U.S. 319, 349-50 (1976). Plaintiff was notified that his property was imminently dangerous on September 8, 2022 pursuant to the Violation Notice the City provided him. He chose not to appeal this determination and has not challenged the property's designation as imminently dangerous. Rather, plaintiff complains that he was not provided with notice as to the expiration of his Make Safe permit. The Code, however, does provide that if a person holding a permit on an imminently dangerous property fails to remain on the schedule set forth by

the permit holder, his or her permit could expire. Phila. Code § PM-110.7.1. The Make Safe permit, in compliance with the Code, advised him of this possibility. It stated that it would expire if work did not commence within ten days of its issuance.

Critical to his due process claim, plaintiff acknowledges that he received actual notice of the property's demolition and an opportunity to be heard on the issue. On January 28, 2023, the inspector informed him that his property would be demolished. Before any demolition, he filed a petition the Court of Common Pleas to stay the demolition of his property. He then proceeded to an evidentiary hearing within the week and was heard as to whether his property should be demolished. Only after plaintiff's motion for preliminary injunction was denied was the property demolished. The City does not have a policy, practice, or custom that denies plaintiff procedural due process. Although time frames were necessarily constricted due to the imminent danger of the property, he had notice and an opportunity to be heard. See, e.g., Win & Son, Inc. v. City of Philadelphia, 162 F. Supp. 3d 449, 461 (E.D. Pa. 2016).

Plaintiff similarly fails to assert that the City's conduct in this case evinces a pattern of deliberate indifference to these policies which protect his constitutional rights. A plaintiff adequately asserts a failure or inadequacy

amounting to deliberate indifference when he or she plausibly alleges that a failure to train has caused a pattern of constitutional violations. Berg v. Cnty. of Allegheny, 219 F.3d 261, 276 (3d Cir. 2000) (per curiam). If plaintiff cannot allege a pattern of violations, he or she may assert that a single injury constitutes deliberate indifference where the failure of the municipality to provide specific training results in a "highly predictable" or "patently obvious" constitutional injury. Kane v. Chester Cnty. Dep't of Children, Youth & Families, 10 F. Supp. 3d 671, 688-89 (E.D. Pa. 2014) (citing Connick v. Thompson, 563 U.S. 51, 64 (2011)).

Plaintiff fails to identify a pattern of violations. He merely asserts in a conclusory fashion that "Despite the Philadelphia Code's requirements, the Defendants and/or through their agents, have repeatedly disregarded the Code." This is not a plausible allegation under Iqbal or Twombly.

Nor does plaintiff assert a "single incident claim." He does not allege facts which show that his purported constitutional injuries were a "predictable" or "obvious" result of any failure on the part of the City to train L&I employees. Zucal v. Cnty. of Lehigh, Civ. A. No. 21-4598, 2023 WL 3997963, at *11 (E.D. Pa. June 14, 2023).[3]

3. Finally, plaintiff does not state a claim that his constitutional violations are a result of the City's deliberate

Accordingly, plaintiff's claim that the City violated his procedural due process right will be dismissed.

IV

Finally, the City argues that plaintiff fails to state a claim that it violated his Fourth Amendment right to be free from an unreasonable seizure. Plaintiff is correct that when a municipality demolishes a person's property, a seizure has occurred. See, e.g., Gariffo Real Estate Holdings Co., Inc. v. City of Philadelphia, Civ. A. No. 05-6153, 2007 WL 1410607, at *4 (E.D. Pa. May 11, 2007).

Plaintiff has not averred that such seizure was unreasonable. He does not state that his property was incorrectly classified as imminently dangerous. He concedes that he received notice of this initial determination on September 8, 2022. He did not take an appeal. The City has a strong interest in ensuring that structures within it do not threaten human safety. Id. at *5 (citing Camara v. Mun. Ct. of S.F., 387 U.S. 523, 537 (1967)).

It is undisputed that the property in issue was imminently dangerous and that demolition may be undertaken in

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indifference on the basis of its failure to train L&I employees. His complaint contains no allegations as to the kind of training the inspectors receive or how such training is inadequate to ensure that citizens receive notice of upcoming demolition of their properties. Godson v. City of Philadelphia, Civ. A. No. 24-6461, 2025 WL 1970251, at *6-7 (E.D. Pa. July 16, 2025).

order to ensure the safety of those in the City. It follows that the seizure was not unreasonable.

Accordingly, plaintiff's claim that the City violated his Fourth Amendment right will be dismissed.

V

Finally, Thomas Rybakowski, sued in both his official and individual capacities, moves for dismissal on the ground that plaintiff fails to state a claim that he violated plaintiff's right to procedural due process and that even if plaintiff did, the claim is time-barred.

To state a claim under § 1983 against an individual defendant, plaintiff must allege that said defendant is personally involved in plaintiff's constitutional injury. Rode v. Dellarciprete, 845 F.2d 1195, 1207 (3d Cir. 1988). The amended complaint does not allege that Rybakowski had any role in notifying plaintiff either that his Make Safe permit had expired or that his property would be demolished. Rather, his complaint contains only conclusory allegations as to his involvement. Plaintiff merely states that Rybakowski "directed Plaintiff's property to be demolished" and that he testified at the hearing before Judge Roberts. Rybakowski is a construction compliance supervisor. There is nothing in the record to suggest that his job requires him to provide notice to individuals of the status of their L&I permits. The hearing, at

which Rybakowski testified, is similarly devoid of any such allegations or evidence. Rather, plaintiff refers to a different inspector with whom he spoke on January 28, as well as "his" inspector, whose identity is not currently before the court. Plaintiff never asserts that Rybakowski was at any point responsible for inspecting plaintiff's property, that he was responsible for failing to post notice of the demolition or that he acted in any way to deny plaintiff notice or any opportunity to be heard.[4]

Accordingly, plaintiff's claim under § 1983 against Rybakowski will be dismissed.[5]

4. The court need not reach Rybakowski's argument that plaintiff's claim is time-barred.

5. Plaintiff has had two bites at the apple. No further amendments will be allowed.